

that in absence of an allegation in respect of the pendency of industrial dispute and that the applicant was a concerned workman in that dispute the complaint brought by the applicant disclose no cause of action and is as such not maintainable.

I accordingly deside the aforesaid issue in favour of the management and dismiss the complaint.

MOHAN LAL JAIN,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Dated 19th May, 1976.

No. 622, dated 24th May, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

MOHAN LAL JAIN,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

Dated 24th May, 1976.

No. 5263-4Lab-76/18162.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Excelsior Plants Corporation Limited, Opposite M. Block, Sector-2, Paly Road, N.I.T., Faridabad.

BEFORE SHRI MOHAN LAL JAIN, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL,  
HARYANA, FARIDABAD

Reference No. 165 of 1975

*between*

THE WORKMAN AND THE MANAGEMENT OF M/S EXCELSIOR PLANTS CORPORATION  
LIMITED, OPPOSITE M. BLOCK, SECTOR-2, PALY ROAD, N.I.T., FARIDABAD

#### AWARD

By order No. ID/64535, dated 17th October, 1975, the Governor of Haryana, referred the following dispute between the management of M/s Excelsior Plants Corporation Limited, Opposite M. Block, Sector-2, Paly Road, N.I.T., Faridabad, and its workmen to this Tribunal for adjudication, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the workmen should be supplied with uniforms ? If so, with what details ?

The parties put in their appearance in response to the usual notices of reference sent to them and filed their pleadings.

The management being absent on 22nd April, 1976 the date of hearing fixed in the case despite being directed to appear and defend the demand,—*vide* order dated 21st January, 1976, *ex parte* proceedings were taken up against them on that date with the directions to the workmen to adduce their evidence in support of their demand on 12th May, 1976.

Neither the workmen nor their authorised representative Shri Ram Murti Sharma appeared on 12th May, 1976 despite directions to the later to substantiate his case on the dispute referred to this Tribunal leading to a conclusion that the workmen were not interested in pursuing the demand raised by them on the management and that there was now no dispute between the parties requiring adjudication.

I hold accordingly and answer the reference while returning the award in these terms.

Dated the 19th May, 1976.

MOHAN LAL JAIN,

Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 616, dated 24th May, 1976.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated the 24th May, 1976.

MOHAN LAL JAIN,  
Presiding Officer,  
Industrial Tribunal, Haryana,  
Faridabad.

No. 5639-4Lab-76/18166.- In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Rohtak, in respect of the dispute between the workmen and the management of M/s The Bengal National Textile Mills Ltd., Mathura Road, Faridabad.

BEFORE SHRIMOHAN LAL JAIN, PRESIDING OFFICER, LABOUR COURT, HARYANA,  
ROHTAK

Reference No. 230 of 1971

between

SHRI RAJ KISHORE SINGH, WORKMAN AND THE MANAGEMENT OF M/S THE BENGAL  
NATIONAL TEXTILE MILLS LTD., MATHURA ROAD, FARIDABAD

### AWARD

By order No. ID/ED/558-D-71 34351-55, dated 23rd November, 1971 of the Governor of Haryana, the following dispute between the management of M/s The Bengal National Textile Mills Ltd., Mathura Road, Faridabad and their workman Shri Raj Kishore Singh was referred to this Court for adjudication, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :-

Whether the termination of services of Shri Raj Kishore Singh was justified and in order ? If not, to what relief is he entitled ?

The parties put in their appearance in this Court in response to the usual notices of reference sent to them and the management filed the written statement in reply to the demand raised on them by the workman and the later filed his rejoinder.

The workman raised a demand dated 23rd May, 1971 in writing on the management that they had terminated his services illegally,—*vide* their letter, dated 13th May, 1971 and that he was entitled to be reinstated with full back wages and continuity of service.

The management pleaded, *vide* written statement filed by them that the workman voluntarily abandoned his job thus losing his lien on the same and that his services were terminated by them and there was as such no industrial dispute and the reference was bad in law. They stated that under the Standing Orders applicable to the workman, he shall be deemed to have left services of his own accord if he remained absent without leave and could not submit a satisfactory explanation for his absence within 8 days of the commencement of his absence. They further raised an objection that the Textile Mazdoor Union could not take or espouse the cause of the workman as has been done in the instant case.

On facts the management set up a case that the workman employed as a chowkidar with them applied for grant of leave for the period from 30th April, 1971 to 4th June, 1971 which could not be sanctioned due to continued agitation of their workmen generally by way of illegal strikes and demonstrations and their requirement of all the security men in their services under these circumstances. They specifically stated that Shri Raj Kishore Singh, workman concerned had been informed by their Director that in an hour of emergency, his long leave could not be entertained and sanctioned more particularly when it was not justified and that the same had been rejected. They stated that despite this information of rejection of his application for grant of leave, the workman absented himself from duty with effect from 3rd May, 1971 rendering him liable the loss of lien on his job under their Standing Orders and that on his reporting for duty on 20th May, 1971 a request made by him for that purpose was denied. They give out that the workman being a chowkidar was out of the purview of Factories Act and the reference was bad on this ground also.

The workman controverted the pleas of the management including the one that he had been informed of rejection of his application of grant of leave,—*vide* rejoinder filed by him with the result that the following issues were framed on pleas of the parties,—*vide* order, dated 6th April, 1972 :-

- (1) Whether the workman being a Chowkidar is outside the purview of the Factories Act and the reference is invalid on this ground ?

- (2) Whether the workman voluntarily abandoned the service of the company and thereby lost his lien on his service ?
- (3) Whether the workman was on leave which was originally granted and got extended ?
- (4) Whether the termination of services of Shri Raj Kishore Singh was justified and in order ? If not, to what relief is he entitled ?

I have heard the learned authorised representatives for the parties with reference to the evidence led by them and have carefully seen the record. I decide the issues as under:—

*Issue No. 1.*—The management did not press the pleas covered by this issue and Dr. Anand Parkash, their authorised representative appearing for them did not address any arguments there upon. Even otherwise the plea relating to this issue is frivolous and there is seemingly no reason justifying a finding that the watchman is outside the purview of the Industrial Law and the reference is bad on that ground. I, thus, decide this issue against the management.

*Issues No. 2 & 3.*—These are important issues of fact in the case and shall be disposed of together. I consider it necessary to state *in extenso* the relevant provision of the Model Standing Orders admittedly applicable to the parties in absence of the Certified Standing Orders as under:—

*“Privilege of Earned Leave.*—Leave with wages shall be allowed to all workmen in accordance with Chapter VIII of the Factories Act, 1948. A workman, who desires to avail of his leave due under the Factories Act otherwise than in accordance with the scheme approved by the Chief Inspector of Factories under section 79(8) and (9) shall apply to the Manager for it in the manner prescribing below:—

- (1) An application shall be made in writing to the Manager or the person authorised and notified for the purpose stating clearly the date from which the leave is required, reasons warranting the grant of such leave and the duration for which it is required, giving the address for communication during the period of leave and shall be submitted to the Officer notified for the purpose or the Manager, at least 15 days in advance, if the leave is for a duration longer than three days and two days in advance, if the duration applied for is less than three days, except when it is on medical grounds, death or serious illness in the family, accident or fire in the personal house or any such natural catastrophe in which case the application may be made the same day. Orders on the leave application shall be passed without delay and always before the leave applied for is to commence or within 24 hours of the receipt of the application. In case it is received on the same day under the circumstances mentioned above and shall be communicated to the workman and in the alternative it shall be presumed that the leave applied for has been sanctioned to the workman.
- (2) If the leave applied for is granted, a leave pass shall be issued to the workman. If it is refused, the fact of such refusal shall be communicated to the workman before the leave applied for is to commence.

It is admitted that the workman made an application Ex.M.2, in writing on 18th April, 1971 for grant of leave for the period from the 30th April, 1971 to 4th June, 1971, on the ground that there was a daughter's marriage in his family on 6th May, 1971 and that his attending the same was essential and that the marriage could not be celebrated without his presence, more than 15 days in advance as required,—vide clause 16 of the Model Standing Orders reproduced above and an order of its rejection Ex.M.1 by the management was made the same day. It is further conceded by the management that the order Ex.M.5 was not conveyed to the workman in writing and that it was on the other hand conveyed to him verbally.

A short question that arises for determination under the circumstances would be as to whether it was necessary for the management to convey the orders of rejection of the leave application to the workman in writing or it was sufficient for them to do so verbally. There is no specific mention of the requirement of conveying order of rejection of leave to the workman in writing, in the relevant Standing Orders reproduced above, even though a requirement of the workman making an application in writing is so stated there in. Whereas the learned authorised representative of the management contended that in case the management conveyed the orders of rejection of the application for grant of leave to the workman verbally, it was a sufficient compliance of the relevant Standing Orders and it was not necessary for them to convey the order to the workman in writing, Shri R.N. Roy the authorised representative for the workman argued otherwise while vehemently urging that the management, was under a duty to convey such orders to the workman in writing and on their failure to do so they shall be deemed to have sanctioned the application. On my giving full consideration and without thought to the language used in relevant Standing Orders reproduced above I uphold the arguments of the learned authorised representative for the workman, in as much as the words “and shall be communicated to the workman” at the end of the Standing Orders 16(1), shall have to be read as *ejusdem generis* with the words “An application shall be made in writing

to the manager" used in the beginning of the aforesaid Standing Orders. Even otherwise, the interpretation sought to be put on the relevant Standing Orders by the authorised representative for the management does not seem to be reasonable and it is not possible to hold that the framers of the Standing Orders wanted to provide a criterion different while considering the duties of the management to the one laid down in connection with the duties of the workman. In other words, when a workman is required to make an application in writing there does not seem to be any reason for holding that it was sufficient for the management to convey the order of rejection of the leave application to him verbally, and considered from any angle, the management in my opinion were under a duty to communicate the orders Ex. M.1 to the applicant in writing. Their having failed to do so it shall be presumed that the leave applied for by the workman had been sanctioned. The workman was under the circumstances fully justified in leaving for his home town on 3rd May, 1971 to attend the marriage of his daughter fixed for 6th May, 1971 when the management failed to inform him of the orders made on his application in writing till 3rd May, 1971, and the action of the management of declining to take him on duty on his reporting them for that purpose on 20th May, 1971 was unjustified amounting to illegal termination of his services.

Assuming that it was legally sufficient for the management to convey the orders Ex.M.1 relating to the rejection of the application Ex.M.2 made by the workman for grant of leave, verbally, it is necessary to consider and determine as to whether they actually did so. There is on record the solitary statement of Shri S.D. Pandey, Head Time Keeper of the management, who deposed about his having conveyed the orders to the workman. He, however, admitted that there was no noting or endorsement in writing on the application, Ex. M.2 either in his own handwriting or in the handwriting of any other official about the communication to the workman of the orders, Ex. M.1 verbally on 19th April, 1971. His explanation that he initiated the application Ex. M.2 at mark 'A' in token of his having done so, is far from satisfactory and I can think of no reason of an omission of the noting or endorsement as referred to above on the application, Ex. M. except ascribing it to the failure of the management to convey the orders even verbally. Mere initials of Shri S.D. Pandey at mark 'A' on the application, Ex. M.2 do not warrant a conclusion of his having communicated the order Ex.M.1 to the workman verbally.

The letter dated the 13th May, 1971 Ex.M.4 prepared and sent by the management to the workman complaining to the later of his absence from duty with effect from 3rd May, 1971 and intimating him that his name had been struck off their rolls with effect from 12th May, 1971 on grounds of his continued absence and that he could collect his dues bears no mention of the fact that he had been communicated the orders of rejection of his application verbally and this circumstance further strengthens the conclusion already arrived at by me. In fact, there is admittedly no noting in writing anywhere in records of the management in respect of a verbal communication to the workman about rejection of his application, in accordance with the relevant Standing Orders and the conclusion is that no communication was made to the workman even verbally. If the management had actually conveyed such an information to the workman there must have been some record in their possession by way of some noting or writing to that effect. It would be interesting to note this important omission even on the application Ex. M.6 made by the workman on the 20th May, 1971 for assigning him duties after he received a copy of the letter, Ex. M.4 with an information to him that his name had been struck off.

The statement of Shri S.D. Pandey that he informed the workman about the order Ex.M.1 verbally, was rebutted by the later with a deposition that such an order was never conveyed to him nor was it written in his presence and I see no reason to disbelieve the workman particularly when nothing could be brought in his cross-examination justifying such a course and there are many a prick holes in the testimony of Shri S.D. Pandey.

Shri S.D. Pandey admitted that there were about 4 or 5 watchmen on the rolls of the management during April, 1971 besides about 10 spinners, 84 weavers and 32 clerks and no watchman had been engaged by the management in place of Shri Raj Kishore Singh during his absence. This admission well falsifies the plea of the management that they could not spare Shri Raj Kishore Singh on account of continued strikes and demonstrations of their workmen during that period. The irresistible conclusion on the other hand is that the management somehow wanted to weed out the workman from their services on one ground or the other and thought of this contrivance as the best for depriving him of his services for reasons best known to them. It cannot be said by any stretch of imagination that a marriage of a daughter is no valid ground for grant of leave for one month. I, thus, for the reasons aforesaid decide both these issues against the management while holding that the workman was not informed of the order Ex. M.1 either in writing or verbally and that he shall be deemed to have been granted leave applied for by him, under the Standing Orders reproduced above.

*Issue No. 4.*— In view of my findings on issue No. 1, 2 & 3, the management shall be deemed to have terminated the services of workman unjustifiably and illegally with the result that he would be entitled to the reinstatement with continuity of service and full back wages. I decide this issue accordingly.

I, thus, answer the reference and return the award in terms of the findings made on issue No. 1 to 4.

Dated the 4th June, 1976.

MOHAN LAL JAIN,

Presiding Officer,  
Labour Court, Haryana.  
Rohtak.